

## CONNECTICUT BOARD OF EXAMINERS IN PODIATRY

In re: Gary Fleischman, D.P.M.  
License No. 059

MEMORANDUM OF DECISION

The Department Health Services presented the Connecticut Board of Examiners in Podiatry (Board) with a Statement of Charges dated August 1, 1986, brought against Gary Fleischman, D.P.M. (Respondent). The Statement of Charges alleged in three counts that the Respondent violated Conn. Gen. Stat. § 20-59 in that he: (1) performed foot surgery on a patient in an incompetent or negligent fashion; (2) did not keep adequate and complete records of said patient; and (3) failed to release said patient's medical records upon receipt of a duly authorized release.

A Notice of hearing, dated August 4, 1986, was issued to the Respondent by the Board. The Department's Statement of Charges was attached to the Notice. The hearing was scheduled for September 10, 1986. The Hearing was held on September 10, 1986, with continued hearings held on November 5, and 12, 1986. Both parties were given the opportunity to respond and present evidence and argument on all issues and were permitted to conduct cross examination.

FINDINGS

1. Respondent was at all pertinent times licensed to practice podiatry by the Department of Health Services.

2. On November 12, 1984, the Respondent performed arthroplasty, as well as a capsulotomy and tenotomy on some of Ms. Rudolph's left toes in Respondent's Milford, Connecticut office.

3. During the course of the surgical procedure on Ms. Rudolph, the proximal interphalangeal joints on several toes were partially removed in a random pattern.

4. In performing the surgical procedure on Ms. Rudolph, Respondent removed portions of the articulating, functional surface of the joint, and left portions of the joint in place.

5. The Respondent's operative reports concerning Ms. Rudolph's November 12, 1986, surgery consisted of pre-printed forms on which only the name of the patient, the date, and the toes operated on were filled in.

6. The medical records concerning Ms. Rudolph maintained by the Respondent consisted primarily of two pre-printed operative forms, a pre-printed patient questionnaire, a pre-printed informed consent agreement, and pre-operative and post-operative x-rays. The pre-printed forms were largely filled out by the patient and did not include a thorough medical history of the patient.

7. By letter dated December 13, 1985, Ms. Rudolph requested her complete medical file from Respondent.

8. By letter dated December 31, 1985, Respondent denied Ms. Rudolph access to her files until her account with Respondent was paid in full.

9. Pursuant to Conn. Gen. Stat. § 4-182(c), the Department of Health Services notified Respondent to provide him with a full opportunity to show compliance with all lawful requirements for the retention of his license. The Department's certified letter was returned, marked unclaimed, on July 8, 1986.

#### DISCUSSION AND CONCLUSIONS

##### First Count

The Respondent is charged with performing foot surgery in a negligent or incompetent fashion in violation of Conn. Gen. Stat. § 20-59(4) in that: (a) proximal interphangeal joints on several toes were partially removed in a random patterns; (b) portions of the articulating, functional surface of the joint had been removed, and portions left in place; and (c) Respondent failed to conform to sound surgical principles of podiatry. On the basis of the facts it has found, the Board concludes that Respondent has violated § 20-59 as to parts (a) and (b) of the First Count.

The Respondent used a procedure known as minimal incision surgery on four of Ms. Rudolph's left toes. Based on standard text in the field of minimal incision surgery and expert testimony by podiatrists employing minimal incision surgery, the Board accepts that the correct procedure in a case like Ms. Rudolph's would be to remove one side of the toe joint, without leaving any portions of that side in place, to reduce deformity. The Board finds that the post-operative x-ray of Ms. Rudolph shows the Respondent removed a portion of the joints in random manner. (Transcript, November 5, 1986, p. 44).

The testimony of Dr. Samuel Berkowitz, D.P.M., was believed to be credible by the Board. Dr. Berkowitz, D.P.M., stated that x-rays on toes three and four showed portions of the healthy joint tissue removed, whereas in toes two and five healthy joint tissue was left in place. (Transcript, November 5, 1986, p. 17).

Conn. Gen. Stat. § 20-59(4) states in pertinent part:

The board may take any actions set forth in section 19a-17 for any of the following reasons: ... (4) illegal or incompetent or negligent conduct in the practice of podiatry.

Due to the random removal of the toe joints, and the inconsistency of some joint portions removed and some left in place, the Respondent was negligent with regard to Ms. Rudolph's surgery by not employing proper techniques in minimal incision surgery.

Second Count

The Respondent is charged with failing to keep adequate and complete medical records on Patricia Rudolph in violation of § 20-59(4) and/or (10) of the Connecticut General Statutes.

Respondent's operative reports on Ms. Rudolph's November 12, 1984, surgery were actually pre-printed forms where only the name of the patient, the date of surgery, and the designation as to which toes were being operated on were typed in by a member of Respondent's staff, who would then stamp Respondent's signature at the bottom. Certain procedures that the Respondent performed, such as the type and amount of anesthesia dispensed to Ms. Rudolph, were not recorded on the operative report.

The Respondent's medical history did not contain routine pre-operative screening procedures of the patient. The patient's medical history record consisted of a pre-printed questionnaire, filled out by patient Rudolph, without a space for the name of Ms. Rudolph's regular physician.

The Board finds that Respondent's medical records for Ms. Rudolph were incomplete and inadequate because the records did not contain a thorough medical history, were not specific to the patient, and lacked important details of the actual procedure. Consequently, Respondent violated Conn. Gen. Stat. § 20-59 with regard to the Second Count.

### Third Count

The Third Count alleges that the Respondent failed to release Patricia Rudolph's medical records upon receipt of a duly authorized release in violation of Conn. Gen. Stat. § 20-59.

On December 13, 1985, Ms. Rudolph sent an authorized release to Respondent, requesting her records from him under Public Act No. 83-413, which, Ms. Rudolph wrote, "requires that you provide me these records irrespective of any payment dispute we might have."

Respondent admitted in testimony that under the advice of counsel he withheld Ms. Rudolph's records in order to receive the unpaid amount from services Respondent performed on her which was \$1,805.00. On December 31, 1985, Respondent denied Ms. Rudolph access to her records.

The issue before the Board is only to determine whether or not Respondent actually failed to release Ms. Rudolph's records, based on the charges set out in the Third Count. The Board finds, on the basis of the facts presented, that Respondent did not release Ms. Rudolph's records and therefore violated Conn. Gen. Stat. § 20-59.

### ORDER

Pursuant to its authority under Conn. Gen. Stat. § 19a-17, the Board of Examiners in Podiatry hereby orders that:

1) The license of the Respondent, Gary Fleischman, practice podiatry in Connecticut be suspended for a period of eighteen months, effective twenty-one (21) days after the date of this order.

2) That the Respondent shall pay a fine of five thousand dollars (\$5,000).

In determining an appropriate order in this case, the Board has given consideration to its decision dated December 1, 1985 in which the Board ordered that a letter of reprimand be placed in Respondent's file and considered in connection with disciplinary hearings; and the Board's June 25, 1986 decision now on appeal, suspending the license of the Respondent to practice podiatry in Connecticut for six months.

Connecticut Board of  
Examiners in Podiatry

Date July 22, 1987

Irving Freedman D.P.M.  
Dr. Irving Freedman, D.P.M.  
Chairman

TO: John Boccaccio, Acting Section Chief, L&R ✓  
David J. Pavis, Section Chief, PHHO  
Applications and Examinations Section

FROM: Celia B. Carroll, Health Board Liaison

RE: G. Fleischman, D.P.M.

DATE: ~~September~~ 25, 1987

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This is to inform you that the appeal period in the above-captioned matter expired on September 25, 1987.

\_\_\_\_\_ No appeal was filed in this matter.

XXX An appeal was filed in this matter on September 2, 1987.  
Please see attachment.

Attachment(s)

CBC:cb

9-25-87  
Doris: See Memo on this



WHEREFORE, the plaintiff appeals from the aforementioned Decision and Order of the State of Connecticut, Board of Examiners in Podiatry and petitions this court to vacate and set aside the aforementioned Decision and Order and to grant such other and further relief as in law and equity may pertain. In addition, the plaintiff asks that the court enter a stay of the Board's decision and order subject of this appeal upon such terms and conditions as the court may deem appropriate in accordance with Section 4-183(c) of the Connecticut General Statutes.

PLAINTIFF, GARY FLEISCHMAN, D.P.M.

By

Alan M. Kosloff  
Rome, Case, Kennelly and  
Klebanoff, P.C.  
His Attorneys